

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LION ELASTOMERS, LLC

Employer,

and

USW, LOCAL 13-836

Petitioner.

Case 16-RC-262751

**CORRECTED EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S
DENIAL OF CONTINUANCE OF ELECTION AND REQUEST FOR *EXPEDITED*
CONSIDERATION OF REQUEST FOR REVIEW AND STAY OF ELECTION**

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September 1, 2020

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I. INTRODUCTION

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, the Employer, Lion Elastomers, LLC (the Employer), hereby requests review of the Regional Director's August 31, 2020 Decision denying the Employer's Emergency Motion to Continue Election. Additionally, pursuant to Section 102.67(j)(1)(i) and (ii), the Employer requests expedited consideration of the request for review, or a stay of the mail ballot election scheduled to begin on September 2, 2020.¹

II. SUMMARY OF FACTS

A. Procedural History

On July 8, the Petitioner, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied & Industrial Service Workers International Union, AFL-CIO, CLC (the Petitioner), filed a an *Armour/Globe* petition seeking to add seven Electrical and Instrumentation employees to an existing unit of some 100 represented Maintenance and Production employees and the Employer's Orange, Texas facility. (Exh. 1) Orange is located at the Texas/Louisiana border.

On August 12, the Employer agreed to a mail ballot election and the Regional Director approved a stipulated election with mail ballots to be sent on September 2, at 4:45 p.m. (Ex. 2).

At the time of the stipulation, Hurricane Laura had not yet formed. Subsequently, the devastating hurricane formed, grew exponentially, and targeted the Orange, Texas area. Accordingly, a mandatory evacuation was issued for Orange and the surrounding areas. (Exhibit 3, August 27 Supplemental Filing on Emergency Motion). This required evacuation of the plant and the areas containing the homes of the seven affected employees. (Exhibit 4, Voter List).

¹ All dates referenced herein are in 2020, unless otherwise indicated.

Accordingly, on August 26, 2020, the Employer filed an Emergency Ex Parte Motion for Continuance of Election in Case 16-RC-262751. (Exhibit 5). The motion requested a brief eight-day, or alternatively indefinite, continuance of the election until September 10.

As the Board is likely aware, Hurricane Laura made landfall near the Texas/Louisiana border as a Category 4 storm. News reports indicated that the storm impacted the Orange area with physical damage and power outages. Accordingly, on August 31, the Employer updated its submission to the Region 16 Regional Director via e-mail. (Exhibit 6). In it, the Employer reiterated that the following:

- 1) The plant is still without power
- 2) The is plant is in full blown repair and recovery phase
- 3) There was a public mandatory evacuation for Orange and the surrounding 50 to 75 miles.
- 4) The company does not yet have full information on employee status.
- 5) There may be employees whose homes are destroyed or severely damaged and therefore not habitable.
- 6) Like the plant, employees' homes that suffered no damage are likely without power and may not be habitable
- 7) For at least some part of the voting period, September 2 to 24, homes may not be habitable affecting the allotted voting period.
- 8) The homes of U.S. Postal Service employees are likely affected similarly which will impact mail receipt and delivery;
- 9) Along with the destructive results of the hurricane, the U.S. Postal Service is having delivery challenges.

Despite this record, and the inability to ensure any fair opportunity for the voting employees to participate properly in a mail in election, the Regional Director denied the Emergency Motion on August 31, 2020. (Exhibit 7). In his decision, the Regional Director minimized the effects of a Category 4 hurricane and the concomitant loss of power and damage to property. Moreover, without so much as response from the Union, the Regional Director assumed the functionality of U.S. mail operations and a lack of effect on the housing of the voters. It is from this denial that the Employer seeks review.

III. LEGAL ARGUMENT

A. Request for Review

The Board should grant the Employer's request for review because the Regional Director disregarded and departed from officially reported Board precedent, and his decisions on substantial factual issues are clearly erroneous on the record, which prejudicially affects the Employer's rights. Sec. 102.67(d)(1) and (2).

1. The Regional Director should have continued the election because of the exceptional circumstances surrounding Hurricane Laura.

On the same day as the Regional Director's denial of the motion, the Board recognized the impact of unforeseen and exceptional events. (Exhibit 8, NLRB Decision and Order *NB Texas, LLC*, 370 NLRB No. 11 (August 31, 2020). Notably, the Regional Director denied the Emergency Motion despite having received a copy of the decision from counsel for the Employer. (Exhibit 8). This case should be controlling.

In *NB Texas*, the issue concerned the effect of COVID-19 and employer furloughs of all employees on the ability to adequately hold an election. The Board reversed the Regional Director's Decision and Direction and noted that, unlike a permanent cessation of operations scenario, the employer therein specifically stated that it would continue operations without substantial alterations. *Id.* at n. 2. Accordingly, due to the practical impossibility of holding an election without any eligible voters the Board ordered dismissal of the Petition without prejudice to re-filing once those operations resumed.

The present case present similar, if not more compelling, rationale for Board intervention. Here, like *NB Texas*, the Employer is currently attempting to restart operations, albeit without power at the present time. Further, like *NB Texas*, neither the Employer nor the Board can accurately predict the ability of a mail ballot to be received by voting employees. Unlike *NB*

Texas, however, the Employer did not ask that the petition be dismissed, it simply requested a brief continuance for such time as needed to ensure a proper mail ballot election. If anything, a brief continuance to more fully appreciate the effects of Hurricane Laura on the community at large, and the eligible voters specifically.²

B. Request for Extraordinary Relief

A party requesting review may move in writing for extraordinary relief in the form of expedited consideration of its request for review, or a stay of some or all of the proceedings. Sec. 102.67(j)(1)(i) and (ii) of the Board's Rules and Regulations. Expedited consideration of the Employer's request for review, or a stay of the upcoming objections hearing, are warranted under these circumstances.

The Board should expedite its consideration of the Employer's request for review because the mail ballot election is scheduled to commence on September 2, and it would be a waste of administrative and party resources to proceed with an election in light of the uncontroverted evidence that Hurricane Laura made great impact on the area. It would be highly impractical to administer an election without having any means to determine the ability of voters to participate.

In the event expedited consideration and granting of the request for review is not feasible prior to September 2, the Board should order a stay of the election to allow it more time to fully consider and address the Employer's request. See *Cal-Neva Lodge*, 235 NLRB 1167 (1978) (granting employer's request for review and staying election pending decision on request).

² The Regional Director cited a news article on damage to the area to support his assertion that there were minimal impacts. This misses the point altogether. First, the article cited recounts efforts at restoration of essential services. Second, news coverage has shown sufficient damage to warrant even a presidential visit to the area. Third, nothing in the article suggests that the employees' mail was not affected. To the contrary, it details the complete devastation of certain Orange businesses. The point missed by the Regional Director is that there is simply no means to determine at this time the effect on the rights of the eligible voters.

IV. CONCLUSION

The Regional Director's cursory determination of the impacts of one of the largest hurricanes to ever make landfall in the Gulf of Mexico should be disregarded. Given the extraordinary circumstances, there is simply no means to state with any certainty that a ballot return date of three weeks will alleviate the prejudice. Without certainty in ballots reaching employees or their ability to properly return them via mail, the timing of the return date is immaterial. Consequently, the election should be continued until such time that the Board is confident that it can be done properly.

Finally, expedited consideration of the Employer's request for review, or a stay of the upcoming mail ballot election, is warranted under these circumstances to prevent the unnecessary waste of resources, and to ensure the employees' rights are protected and the purposes of the Act are properly effectuated. The Employer submits that a stay of two weeks to a month should be adequate to avoid the risk of non-receipt or untimely receipt.

September 1, 2020.

/s/ Clyde H. Jacob III
CLYDE H. JACOB III
Louisiana Bar Roll No. 7205
LARRY SOROHAN
Louisiana Bar Roll No. 26120
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COUNSEL FOR EMPLOYER

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LION ELASTOMERS, LLC

Employer,

and

USW, LOCAL 13-836

Petitioner.

Case 16-RC-262751

CERTIFICATE OF SERVICE

I hereby certify that, on September 1, 2020, I e-filed the foregoing **CORRECTED EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND REQUEST FOR *EXPEDITED* CONSIDERATION OF REQUEST FOR REVIEW AND STAY OF ELECTION** using the Board's e-filing system and that it was served on the following via e-mail the same day:

Timothy Watson, Regional Director
National Labor Relations Board, Region 16
819 Taylor Street, Room 8A24
Fort Worth, TX 76102-6107
Timothy.Watson@nrlrb.gov
Magdalena.Gonzalez@nrlrb.gov
Maxie.Miller@nrlrb.gov

Brad Manzollilo
USW Organizing Counsel
80 Boulevard of the Allies
Five Gateway Center, Room 913
Pittsburgh, PA 15222
bmanzollilo@usw.org

/s/ Clyde H. Jacob III
CLYDE H. JACOB III

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer
Lion Elastomers, LLC

2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)
5713 FM 1006, Orange, TX 77630

3a. Employer Representative - Name and Title
Tony Wisenbaker, Manufacturing Director

3b. Address (If same as 2b - state same)
Same

3c. Tel. No.
(409) 924-4735

3d. Cell No.

3e. Fax No.

3f. E-Mail Address
Tony.Wisenbaker@lionelastomers.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.)
factory

4b. Principal product or service
produce synthetic rubber

5a. City and State where unit is located:
Orange, TX

5b. Description of Unit Involved
Included: See Attached
Excluded:

6a. No. of Employees in Unit:
Approximately 7

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes ☒ No ☐

Check One: ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) by petition and Employer declined recognition on or about no reply (Date) (If no reply received, so state).
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state).
None

8b. Address

8c. Tel. No.

8d. Cell No.

8e. Fax No.

8f. E-Mail Address

8g. Affiliation, if any

8h. Date of Recognition or Certification

8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____
(Name of labor organization) _____, has picketed the Employer since (Month, Day, Year) _____.

10. Organizations or individuals other than Petitioner and those named in Items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in Item 5b above. (If none, so state)
none

10a. Name

10b. Address

10c. Tel. No.

10d. Cell No.

10e. Fax No.

10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: ☐ Manual ☒ Mail ☐ Mixed Manual/Mail

11b. Election Date(s):
Ballots mailed out 8-7-20

11c. Election Time(s):

11d. Election Location(s):

12a. Full Name of Petitioner (Including local name and number)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied & Industrial Service Workers International Union, AFL-CIO, CLC

12b. Address (street and number, city, state, and ZIP code)
60 Boulevard of the Allies, Five Gateway Center Room 913 Pittsburgh, PA 15222

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (If none, so state)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied & Industrial Service Workers International Union, AFL-CIO, CLC

12d. Tel. No.
(412) 562-2529

12e. Cell No.
(412) 418-4333

12f. Fax No.
(412) 562-2555

12g. E-Mail Address
bmanzollilo@usw.org

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title
Brad Manzollilo, USW Organizing Counsel

13b. Address (street and number, city, state, and ZIP code)
60 Boulevard of the Allies, Five Gateway Center Room 913 Pittsburgh, PA 15222

13c. Tel. No.
(412) 562-2529

13d. Cell No.
(412) 418-4333

13e. Fax No.
(412) 562-2555

13f. E-Mail Address
bmanzollilo@usw.org

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)
Brad Manzollilo

Signature
Brad Manzollilo

Title
Organizing Counsel

Date
7/8/20

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Unit description for Lion Elastomers Petition

Seven (7) E&I Technicians employed by Lion Elastomers, LLC at its Orange, Texas plant, seek to be included in the existing bargaining unit of approximately 90 employees for "All Maintenance and Production, and Warehouse employees employed by the Company at its Orange, Texas Plant, as defined in National Labor Relations Board Case Nos. 23-RC-2548, (December 13, 1965), 23-RC-2851, (December 19, 1966), and 23-RD-193 (February 3, 1969)."

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

LION ELASTOMERS, LLC

Case 16-RC-262751

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

Lion Elastomers, LLC, is a limited liability company with an office and place of business in Orange, Texas, where it is engaged in the manufacture and the nonretail sale of petrochemicals and synthetic rubber products, and annually purchases and receives goods valued in excess of \$50,000 directly from points located outside the State of Texas

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 16, at **4:45 p.m. (CT) on September 2, 2020**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 16 office by close of business on **September 24, 2020**. The mail ballots will be counted at **2:00 p.m. on September 30, 2020**, at a location to be determined, either in person or by videoconference, after consultation with the parties, provided the count can be safely conducted on that date and at the Regional Director's discretion.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 16 office by no later than **4:45 p.m. (CT) on September 11, 2020**, in order to arrange for another mail ballot kit to be sent to that employee.

If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: E&I Technicians employed at the Orange, Texas plant.

EXCLUDED: All other employees including office clerical employees, guards and supervisors as defined by the Act.

Initials: 

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending July 31, 2020**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC?" The choices on the ballot will be "Yes" or "No".

If a majority of valid ballots are cast for UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC, they will be taken to have indicated the employees' desire to be included in the existing unit certified on December 16, 1966 in NLRB Case No. 23-RC-002851 currently represented by UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC. The bargaining unit in NLRB Case No. 23-RC-002851 includes all maintenance and production, and warehouse employees employed by Lion Elastomers, LLC at its Orange, Texas plant. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain

Initials: LT

unrepresented.

8. **NOTICE OF ELECTION.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day the ballots are mailed to employees. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. **NOTICE OF ELECTION ONSITE REPRESENTATIVE.** The following individual will serve as the Employer's designated Notice of Election onsite representative:

Paula Sharp
PSharp@goradiacapital.com
832-493-9812

10. **ACCOMMODATIONS REQUIRED.** All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. **OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

12. **TALLY OF BALLOTS.** Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. **POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

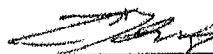
LION ELASTOMERS, LLC

(Employer)

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-
CIO-CLC

(Petitioner)

By:

 8/12/20
(Signature) (Date)

By:

/s/Brad Manzolillo 8/12/20
(Signature) (Date)

Print Name:

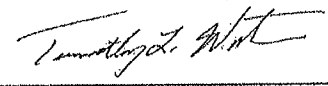
Laurence J. Sushen

Print Name:

Initials: 

Recommended:  8/12/2020
MAXIE E. MILLER, Field Attorney (Date)

Date approved: 8-12-2020


Regional Director, Region 16
National Labor Relations Board

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

LION ELASTOMERS, LLC

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2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

Lion Elastomers, LLC, is a limited liability company with an office and place of business in Orange, Texas, where it is engaged in the manufacture and the nonretail sale of petrochemicals and synthetic rubber products, and annually purchases and receives goods valued in excess of \$50,000 directly from points located outside the State of Texas

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 16, at **4:45 p.m. (CT) on September 2, 2020**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 16 office by close of business on **September 24, 2020**. The mail ballots will be counted at **2:00 p.m. on September 30, 2020**, at a location to be determined, either in person or by videoconference, after consultation with the parties, provided the count can be safely conducted on that date and at the Regional Director's discretion.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 16 office by no later than **4:45 p.m. (CT) on September 11, 2020**, in order to arrange for another mail ballot kit to be sent to that employee.

If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: E&I Technicians employed at the Orange, Texas plant.

EXCLUDED: All other employees including office clerical employees, guards and supervisors as defined by the Act.

Initials: BJM

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending July 31, 2020**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC?" The choices on the ballot will be "Yes" or "No".

If a majority of valid ballots are cast for UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC, they will be taken to have indicated the employees' desire to be included in the existing unit certified on December 16, 1966 in NLRB Case No. 23-RC-002851 currently represented by UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC. The bargaining unit in NLRB Case No. 23-RC-002851 includes all maintenance and production, and warehouse employees employed by Lion Elastomers, LLC at its Orange, Texas plant. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain

Initials: BJM

unrepresented.

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day the ballots are mailed to employees. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative:

Paula Sharp
PSharp@goradiacapital.com
832-493-9812

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

LION ELASTOMERS, LLC

(Employer)

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-
CIO-CLC**

(Petitioner)

By: /s/ Lawrence J. Sorohan 8-12-20
(Signature) (Date)

Print Name: _____

By: Brad Manzollillo 8-12-20
(Signature) (Date)

Print Name: Brad Manzollillo

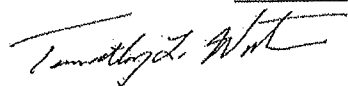
Initials: BJM

Recommended:

 8/12/2020
MAXIE E. MILLER, Field Attorney (Date)

Date approved:

8-12-2020



Regional Director, Region 16
National Labor Relations Board

BJM

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

LION ELASTOMERS, LLC

Employer,

and

Case No. 16-RC-262751

USW, LOCAL 13-836

Petitioner.

**MOTION TO SUPPLEMENT EMERGENCY EX PARTE MOTION
FOR CONTINUANCE OF ELECTION IN CASE 16-RC-262751**

Lion Elastomers, LLC, respectfully moves to supplement its Emergency Ex Parte Motion for Continuance of Election to add the attached exhibit regarding mandatory evacuations for Orange and Beaumont, Texas and Lake Charles, Louisiana. While all impacts from Hurricane Laura, the largest hurricane in approximately two centuries to hit Texas, are not yet fully known, these mandatory evacuation orders underscore the fact that the both ability for all parties to campaign and the ability of the Board to hold a proper mail ballot election have been effectively compromised. Given that the addresses of the voters show residences in mandatory evacuation areas, it is possible, if not likely, that the mail ballots could be going to homes that no longer exist or that may not be habitable for all or some part of the voting period.

Accordingly, Lion Elastomers, LLC, respectfully requests the Regional Director to grant the motion to supplement and grant its Motion for Continuance.

Respectfully submitted this 27th day of August 2020.

/s/ Clyde H. Jacob III
CLYDE H. JACOB III
Louisiana Bar Roll No. 7205
LARRY SOROHAN
Louisiana Bar Roll No. 26120
FISHER & PHILLIPS LLP
201 St. Charles Avenue, Suite 3710
New Orleans, Louisiana 70170
Telephone: (504) 522-3303
Facsimile: (504) 529-3850
chjacob@fisherphillips.com
lsorohan@fisherphillips.com

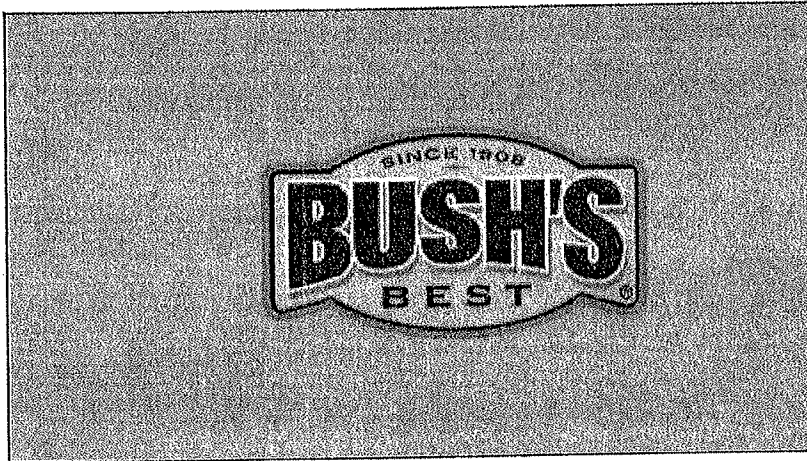
COUNSEL FOR EMPLOYER

8/27/2020

These are all the evacuation orders in place in Texas because of Hurricane Laura

 82°F

BREAKING NEWS



LOCAL NEWS

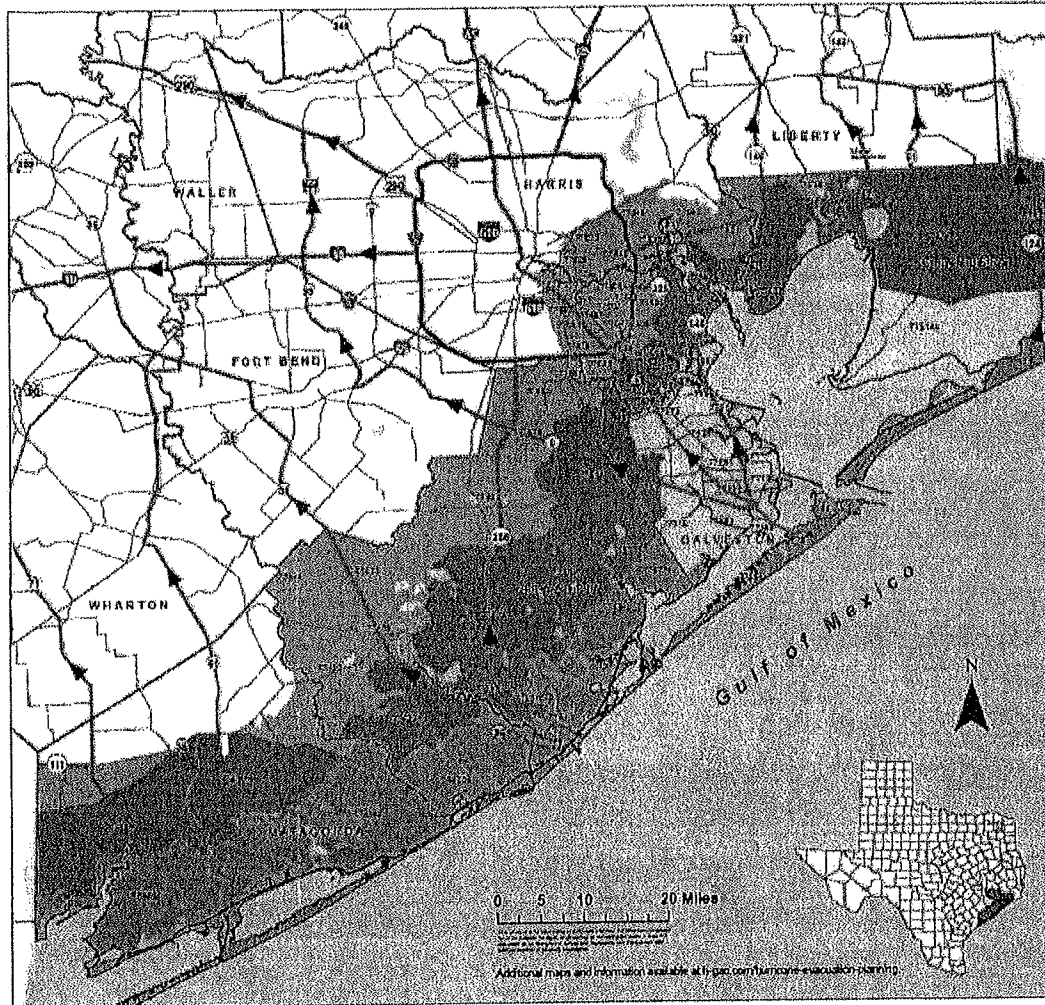
These are all the evacuation orders in place in Texas because of Hurricane Laura

List of places with evacuation orders along Texas coast

Mary Claire Patton, Digital Journalist

Published: **August 26, 2020, 4:23 pm**

Tags: Hurricane Laura, Weather, Galveston, Texas



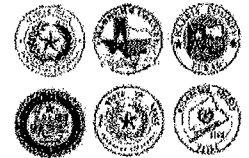
Brazoria, Chambers, Galveston, Harris, and Matagorda Hurricane Evacuation Zip-Zones Coastal, A, B, C

ZIP ZONE COASTAL				
77414n	77422n	77469n	77534n	77541n
77550	77551	77554	77555	77577n
77023				
ZIP ZONE A				
77059n	77510	77514n	77518	77530
77553	77555	77558	77572	77565
77500	77591			
ZIP ZONE B				
77065n	77069	77082	77414n	77422n
77465n	77507	77511	77514n	77515
77517	77520	77523	77531	77534n
77546n	77548n	77550	77555	77571
77572n	77587	77598	77595	
ZIP ZONE C				
77011	77012	77013	77015	77017
77023	77025	77034	77040	77051
77075	77087	77089	77430	77444
77490	77495	77502	77503	77504
77505	77506	77521	77530	77535
77536	77547	77552	77518	77581
77553	77554	77557		

Some zip codes are split into north (n) and south (s) for evacuation purposes.

Route Designation

- ← Evacuation Corridors
- Evacuation Connections
- Other Roads
- County Boundary



Revision Date: March 31, 2020
Expiration Date: December 31, 2020
Map Created by:
Houston-Galveston Area Council

Evacuation Zone (Image from Office of Homeland Security and Emergency Management) (KPRC)



GALVESTON, Texas – Mandatory and voluntary evacuations have been ordered for several Texas cities and counties ahead of Hurricane Laura.

Get the latest [**tracking on Hurricane Laura here**](#) from the KSAT meteorologists, Your Weather Authority.

San Antonio is helping out those that may be impacted by the storm. According to the San Antonio Fire Department, **1,458 evacuees have arrived** at the city's evacuation center since it opened at 3 p.m. on Tuesday. They are expecting more today.

San Pedro Manor, a nursing home facility near San Antonio College, also received 57 evacuees from a sister nursing home in Galveston early Tuesday morning.



Follow KSAT Meteorologist Justin Horne as he reports from the Texas Coast ahead of Hurricane Laura

These are the places with evacuation orders currently in place:

- **City of Beaumont** - Mayor Becky Ames ordered a mandatory evacuation of all citizens on Tuesday.
- **Brazoria County** - Brazoria County Judge, Matt Sebesta, issued a Voluntary Evacuation for low-lying coastal communities outside the protection levee.
- **Chambers County** - "Chambers County Judge Jimmy Sylvia has issued a Voluntary Evacuation Order, specifically targeted at residents whose homes are in low-lying or flood-prone areas, or those whose homes have flooded during recent high-rain events," according to the Chambers County Emergency Management Facebook page.
- **City of Dickinson** - Mayor Julie Masters declared a local disaster due to Hurricane Laura, and has issued a voluntary evacuation order for the City of Dickinson effective Tuesday at 2:00 p.m.
- **City of Galveston** - City of Galveston Mayor Pro Tem Craig Brown signed a mandatory evacuation Tuesday instructing all Galveston residents to begin leaving the island for

safety after overnight models shifted the landfall of Hurricane Laura westward.

- **Galveston County** - Galveston County Judge Mark Henry issued a disaster declaration for the area ahead of Hurricane Laura, according to **KPRC**. Galveston County has issued a voluntary evacuation for the Bolivar Peninsula.
- **Jefferson County** - A mandatory evacuation order was issued Monday night and went into effect at 6:30 a.m. Tuesday.
- **City of La Marque** - Mandatory evacuation outside the levee system. Voluntary evacuation inside the levee system.
- **Orange County** - City Officials called for a mandatory evacuation for all of Orange County at 6 a.m. Tuesday.
- **Port Arthur** - Mayor issued a mandatory evacuation for the City of Port Arthur at 6 a.m. Tuesday.
- **Seabrook** - Mayor Thom Kolupski issued a voluntary evacuation order for Seabrook residents in low-lying areas, specifically lower Todville from Red Bluff south to SH 146 and Baywood Drive, according to city officials.

The state of Texas hurricane Center listed the following evacuation orders (most recently updated Wednesday at 11 a.m.):

Mandatory:

- Bolivar Peninsula
- Galveston, City of
- Hardin County
- Jasper County
- Jefferson County
- Newton County
- Orange County
- Port Arthur, City of

Voluntary:

- Baytown, City of
- Brazoria County
- Chambers County
- Clear Lake Shores, City of
- Dear Park, City of
- Dickinson, City of
- El Lago, City of
- Harris County, Zones A and B
- Jamaica Beach, City of
- La Porte, City of
- League City
- Liberty County
- Lynchburg, City of
- Mont Belvieu, City of
- Nassau Bay, City of
- Pasadena, City of
- Polk County
- Port Arthur, City of
- Seabrook, City of
- Taylor Lake Village, City of
- Tiki Island, City of
- Webster, City of

Interactive map shows major hurricanes, tropical storms that hit Texas from 2001-2020

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ABOUT THE AUTHOR:

LION ELASTOMERS
NLRB CASE NO. 16-RC-262751
VOTER LIST – SEPTEMBER 2, 2020 ELECTION

Last Name	First Name	Work Location	Shift	Job Classification	Personal Email Address	Phone Number	Address
Billeaud	Randall	Orange	Day	Tech. Assistant/E&I	Unavailable	409-779-3051 409-886-4251	5733 Colony Lane Orange, TX 77632
Caraway	Jodie	Orange	C Shift	Sr. Tech. Assistant/E&I	Unavailable	409-289-1217 409-746-0066	P. O. BOX 1141 Deweyville, TX 77614
Johnson	Lonnie	Orange	B Shift	Sr. Tech. Assistant/E&I	Unavailable	409-543-4236 409-794-3798	500 Country Lane Bridge City, TX 77611
Murphy	Paul	Orange	A Shift	Sr. Tech. Assistant/E&I	Unavailable	409-223-8332 409-839-8491	55 Morrogh Beaumont, TX 77707
Rayner	Robert	Orange	D Shift	Sr. Tech. Assistant/E&I	Unavailable	409-201-2007 409-794-3107	1080 Drake Dr. Bridge City, TX 77611
Thomas	Bryan	Orange	Day	Tech. Assistant/E&I	Unavailable	337-802-2511	733 Soileau Rd. Sulphur, LA 70665
Woods	Joseph	Orange	Day	Sr. Tech. Assistant/E&I	Unavailable	409-201-2007 409-886-2431	1663 Bancroft Rd Orange, TX 77632

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

LION ELASTOMERS, LLC

Employer,

and

Case No. 16-RC-262751

USW, LOCAL 13-836

Petitioner.

**EMERGENCY EX PARTE MOTION
FOR CONTINUANCE OF ELECTION IN CASE 16-RC-262751**

The employer in the above captioned representation case, Lion Elastomers, LLC, respectfully moves ex parte for a continuance of eight (8) days, or an indefinite period, for the election scheduled on Wednesday, September 2, 2020 at 4:45 p.m. CDT on the following grounds:

1. Hurricane Laura, predicted to be a category 4 hurricane at landfall, is projected to strike directly at the Orange, Texas area where the employer's plant is located and where the employees live.
2. Orange, Texas county and city officials are calling for a mandatory evacuation.
3. The storm surge is expected to be 30 feet and push from the coast as far as I-10.
4. Homes of employees in the election are likely to suffer flooding and/or wind destruction and/or damage.
5. Employees in the election may not be residing in their homes for postal delivery services of the mail ballots.
6. The timing and capability of U.S. Postal delivery are likely to be affected.

The employer, Lion Elastomers, LLC, respectfully requests the Regional Director to grant the motion.

Respectfully submitted this 26th day of August 2020.

/s/ Clyde H. Jacob III
CLYDE H. JACOB III
Louisiana Bar Roll No. 7205
LARRY SOROHAN
Louisiana Bar Roll No. 26120
FISHER & PHILLIPS LLP
201 St. Charles Avenue, Suite 3710
New Orleans, Louisiana 70170
Telephone: (504) 522-3303
Facsimile: (504) 529-3850
chjacob@fisherphillips.com
lsorohan@fisherphillips.com

COUNSEL FOR EMPLOYER

Sorohan, Lawrence

From: Jacob, Clyde
Sent: Monday, August 31, 2020 1:01 PM
To: timothy.watson@nlrb.gov
Cc: Manzollilo, Brad; Sorohan, Lawrence
Subject: Lion Elastomers and USW Local 13-836; 16-RC-262751 - Hurricane Laura

Dear Mr. Watson:

Lion Elastomers has pending with the Region an emergency motion to continue the NLRB election set for Wednesday, September 2:00 at 4:45 P.M. by mail ballot at the plant located in Orange, Texas. Let me give you an update after the weekend, and I am copying union counsel.

- 1) The plant is still without power
- 2) The is plant is in full blown repair and recovery phase
- 3) There was a public mandatory evacuation for Orange and the surrounding 50 to 75 miles.
- 4) The company does not yet have full information on employee status.
- 5) There may be employees whose homes are destroyed or severely damaged and therefore not habitable.
- 6) Like the plant, employees homes that suffered no damage are likely without power and may not be habitable
- 7) For at least some part of the voting period, September 2 to 24, homes may not be habitable affecting the allotted voting period.
- 8) The homes of U.S. Postal Service employees are likely affected similarly which will impact mail receipt and delivery
- 9) Along with the destructive results of the hurricane, the U.S. Postal Service is having delivery challenges.

These reasons support the motion a continuance of the election which is made in good faith. Thank you.

Yours truly,

Clyde Jacob



Clyde H. Jacob III

Attorney at Law

Fisher & Phillips LLP

201 St. Charles Avenue | Suite 3710 | New Orleans, LA 70170

chjacob@fisherphillips.com | O: (504) 312-4424 | C: (504) 343-0022

vCard | Bio | Website *On the Front Lines of Workplace LawSM*

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

LION ELASTOMERS, LLC.

Employer

and

Case No. 16-RC-262751

**UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL
UNION, AFL-CIO-CLC**

Petitioner

**ORDER DENYING RESPONDENT'S EX PARTE MOTION FOR
CONTINUANCE**

Upon the filing of the petition in Case 16-RC-262751, and approval of a Stipulated Election Agreement on August 12, 2020, of a mail ballot election, the mail ballots are scheduled to be mailed to employees eligible to vote at 4:45 p.m. on September 2, 2020.

On August 26, 2020, Lion Elastomers, LLC (herein Employer) submitted an emergency motion for a continuance of the election of eight days, or an indefinite period, due to the impending Hurricane Laura.

On August 27, 2020, Employer submitted a supplemental motion notifying the Region of the mandatory evacuation of Orange County, Texas, where Employer's facility is located.

Notwithstanding the concerns raised in the Employer's Motion, the impact of Hurricane Laura did not prove to be as serious as expected.¹ On August 28, 2020, effective

¹ <https://gov.texas.gov/news/post/governor-abbott-surveys-hurricane-laura-damage-provides-update-on-response-and-recovery-efforts-in-orange> (Accessed on August 31, 2020)

at 5:00 p.m. Orange County Judge John Gothia lifted the mandatory evacuation order for all of Orange County, Texas based on the hurricane's movement north and the minimal damage to areas affected by the hurricane, including Orange County, Texas.²

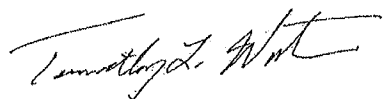
Finally, to the extent that there are concerns about electrical outages or disruption of postal service, reports also reflect that electricity has already been restored in most areas and that the disruption to mail service has been minimal.³

Furthermore, the seven eligible voters in the agreed upon voting unit have three weeks from September 2, 2020, to return their ballots to the Region 16 office and an additional four business days before the mail ballots are counted on September 30, 2020, at 2:00 p.m. In the event additional time is required for the voters to return their ballots, the parties may enter into a stipulation to provide additional time.

Based upon the foregoing, and upon consideration of the matter,

IT IS HEREBY ORDERED, that Employer's Ex Parte Motion for Continuance is denied.

DATED at Fort Worth, Texas, this 31st day of August 2020.



Timothy L. Watson
Regional Director
National Labor Relations Board
Region 16
Room 8A24, Federal Office Building
819 Taylor Street
Fort Worth, TX 76102

² <https://www.co.orange.tx.us/PressReleases> [Press Release #7] (Accessed on August 31, 2020)

³ <https://www.12newsnow.com/article/weather/hurricane/live-updates-as-southeast-texas-cleans-up-after-hurricane-laura/502-abf158c9-076c-456b-afb6-6377421302d8> (Accessed on August 31, 2020).

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

NP Texas LLC d/b/a Texas Station Gambling Hall and Hotel and Local Joint Executive Board of Las Vegas, Petitioner. Case 28–RC–261253

August 31, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

On May 28, 2020,¹ the Petitioner filed a petition to represent a unit of employees at the Employer's casino and hotel in Las Vegas, Nevada (the Texas Station Casino). On July 2, the Regional Director issued a Decision and Direction of Election, directing a mail-ballot election and scheduling the ballots for mailing on July 23. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, as amended, the Employer filed a request for review, along with a request to stay the election. On July 13, the Board issued an order staying the election.

The issue in this case is whether the Regional Director erred in scheduling an election during a time in which the Employer has indefinitely suspended its operations and laid off all of its employees, due to the Coronavirus Disease 2019 (COVID-19) pandemic. For the reasons stated below, the Employer's request for review of the Regional Director's Decision and Direction of Election is granted, as it raises substantial issues warranting review. Upon review, we find that the Employer's laid-off employees have no reasonable expectation of recall and are therefore ineligible to vote. Thus, there are no eligible voters at this time. Under such circumstances, we conclude that the best course of action is to dismiss the petition, without prejudice and subject to reinstatement when the Employer resumes its operations.

A. Facts

On March 18, the Governor of Nevada issued an emergency directive, directing all of the state's casinos to cease operations until April 16. In accordance with this directive, the Employer's parent company, Station Casinos, alerted its employees that it would be temporarily closing all 20 of its Las Vegas properties. While some of the petitioned-for employees continued working through the end of March in order to prepare the casino for an extended shutdown, most of the petitioned-for employees had their last day of work on or about March 18. At that time, some employees' managers or supervisors informed them that

they would likely be recalled probably at the end of April or in early May pursuant to the recall provisions of the Employer's Reduction-in-Force policy. The policy states that "if a laid off Team Member returns to a position within the Company within 90 days, the Team Member will be reinstated with his or her original hire date."

The casino, however, did not reopen before August 1. The Governor extended the casino closure order on March 31, and then again on April 29; with the second extension, the Governor ordered gaming operations to remain closed through May 15, and until the Nevada Gaming Control Board determined that operations could safely resume. In response to these orders, on May 1, Station Casinos issued a letter to all of its employees, outlining a reopening plan. Under the first phase of its reopening plan, Station Casinos would reopen several of its properties (collectively the Phase One Properties). The non-Phase One Properties, including Texas Station Casino, would remain closed, and Station Casinos would "look at reopening them once we have had a chance to assess how our business is performing in a post COVID-19 world." The letter stated that there would be meaningful staffing-level reductions but that it was "hopeful . . . that Las Vegas will rebound swiftly and allow us to rehire many of our valued team members when we emerge on the other side of this crisis." It concluded by observing that "[e]ach team member will separately receive a communication with respect to his or her employment status."

For the petitioned-for employees at Texas Station Casino, this "separate communication" was a May 1 termination letter. The letter explained that "[t]he Company's casino operations in Nevada have been temporarily closed for business since the [Governor's] order became effective[,] and the uncertainties facing the Company prevent us from predicting whether or when we can resume normal operations." The letter further explained that, due to these circumstances, Station Casinos "made the difficult decision to temporarily close its Texas Station casino effective May 1, 2020, and your employment will end at that time." Consistent with its practices and policies for terminated employees, the Employer paid out unused vacation, accrued vacation, and floater days to the terminated employees; required those employees to return their uniforms; cleaned out their lockers and allowed them to reclaim the contents; and helped them process unemployment claims by taking the position that the employees had been permanently terminated. Full-time employees would have their medical, dental, and vision benefits extended through September 30, and the employees were paid through May 16.

¹ All dates 2020 unless otherwise noted.

On May 7, the Governor issued another directive, stating that gaming operations would remain closed through Nevada's first phase of reopening, effective through May 30. On May 19, the Chief Financial Officer (CFO) of Red Rock Resorts, a publicly traded company that manages Station Casinos, announced Station Casinos' plans with respect to the Phase One Properties, as outlined above. The CFO stated that "[w]e remain hopeful that Las Vegas and our business will rebound quickly and allow us to rehire many of these valued team members when we emerge on the other side of this crisis," and that "casinos will be permitted to reopen in the coming weeks." With respect to Texas Station Casino and other non-Phase One Properties, the CFO stated that "we will look at reopening these properties once we have had a chance to fully assess how our first-to-open properties are performing post-crisis, as well as the recovery of the Las Vegas market and the economy as a whole."

On May 27, the Governor ordered the Nevada Gaming Control Board to promulgate requirements for a phased and incremental resumption of gaming operations, with openings commencing no sooner than June 4. Station Casinos immediately announced that it would reopen its Phase One properties on June 4, as it had planned. Station Casinos made no announcements or remarks with respect to reopening Texas Station Casino or the other non-Phase One properties. As of June 11, the marquee outside the Texas Station Casino read, in part, "STAY SAFE, WE'LL BE BACK!"; around June 15, the Texas Station Casino website began to display a pop-up window that stated "[w]e are temporarily closed and currently not taking reservations. We look forward to opening soon and welcoming you back."

As of the June 16 hearing in this case, none of the four non-Phase One Properties had reopened to the public. At the hearing, the Executive Vice President (EVP) and Chief Legal Officer (CLO) of Red Rock Resorts and Station Casinos LLC, Jeffrey Welch, stated unequivocally that "[t]here is no current plan to reopen Texas Station." Welch testified that there was no timetable in place for reopening any of the non-Phase One Properties, and that he did not "anticipate that a decision will be made about what to do about Texas Station for quite some time." According to Welch, "the decision on Texas Station . . . would be the last decision that we would make," and was "likely to be at the very tail end of our decision-making process." While he acknowledged being "not displeased" with respect to the reopening of the Phase One Properties, and noted that there appeared to be a lot of "pent-up demand" for casinos to reopen, he stated that any reopening decision would involve a multi-factor analysis, including the performance of any reopened casino; the state of the

economy as a whole; how Las Vegas, in particular, was doing; and whether there was any "backsliding" with respect to the ongoing health crisis. Under these circumstances, it was Welch's view that "[i]t is possible that we will open one or more of those properties [non-Phase One casinos]," but that "[i]t is also possible that one or more of those properties will never reopen." He further testified that there was "no reasonable likelihood," "whatsoever," that Texas Station Casino would reopen in 2020. As of our decision today, Texas Station Casino remains closed.

B. Analysis

"It is well established that temporarily laid-off employees are eligible to vote," and that "[t]he voting eligibility of laid-off employees depends on whether objective factors support a reasonable expectancy of recall in the near future, which establishes the temporary nature of the layoff." *Apex Paper Box Co.*, 302 NLRB 67, 68 (1991). These factors include "the employer's past experience and future plans, the circumstances surrounding the layoff, and what the employees were told about the likelihood of recall." *Id.* In order for employees to be eligible to vote, a reasonable expectation of recall must exist at the time of the payroll-eligibility period, regardless of whether the employees have been recalled by the date of the election. *Id.* Permanently laid-off employees—i.e., those laid off with no reasonable expectation of recall—are not eligible to vote. *Id.* at fn. 2.

Here, the Regional Director concluded that "the petitioned-for employees are laid off employees with the reasonable expectation of recall." In this regard, he observed that "[t]he Employer's public statements, e.g. the marquee outside Texas Station, the statements made during the quarterly earnings call, supervisors' statements to individual employees, the Employer's human resources policies, and the testimony of the Employer's own witnesses shows that the Employer has not permanently closed its Texas Station casino and that it may reopen depending on" several factors, including the performance of the Phase One Properties. The Regional Director further observed that "the Employer has not announced and/or does not have current plans to fundamentally change the nature of its business at Texas Station," and that "the employees may reapply for work with the Employer, even after the 90-day recall period."

We disagree with the Regional Director. "In the absence of evidence of past practice regarding layoffs, where an employee is given no estimate as to the duration of the layoff or any specific indication as to when, if at all, the employee will be recalled, the Board has found that no reasonable expectancy of recall exists." *Id.* at 69; see also *Foam Fabricators*, 273 NLRB 511, 512 (1984); *Tomadur, Inc.*, 196 NLRB 706, 707 (1972). The Board has observed

that “[w]hen the employer has had a past history of layoffs and recalls it is somewhat easier to determine exactly what would be a reasonable expectancy of reemployment in the near future,” such that “[i]f the business pattern follows a cyclical or seasonal term and employees who are laid off are usually rehired, the prediction can be made with some accuracy.” *Foam Fabricators*, supra at 512. But, if the employer has no reasonable way to predict when it will recall employees—especially where the employer is facing a situation for which it has no past practice or where the employees at issue were hired for a specific, non-seasonal project—the Board will find that the employees at issue are not eligible to vote. See *id.*; see also *S&G Concrete Co.*, 274 NLRB 895, 896 (1985). Under such circumstances, “[v]ague statements by the employer as to the ‘chance’ or ‘possibility’ of the employee being rehired do not provide an adequate basis for concluding that the employee had a reasonable expectancy of reemployment.” *Foam Fabricators*, supra at 512; see also *Sol-Jack Co.*, 286 NLRB 1173, 1173–1174 (1987); *S&G Concrete*, supra at 897 (“[W]hen the other factors involved do not support a laid-off employee’s having a reasonable expectancy of recall, verbal statements indicating possible recall will not overcome the totality of the evidence to the contrary.”).

Here, the Employer has not indicated, and there is no basis for finding that it could have indicated, when it will resume operations and/or recall the employees at issue. While the Employer’s managers may have made statements suggesting that the laid-off employees would be recalled in late April, they made these statements in early March. By the time the employees were laid off on May 1, it was clear that the Employer had no idea of when (or whether) the Texas Station Casino would reopen and resume operations. Nor does the Employer have any “past practice” relating to laying off employees in the face of an unprecedented pandemic. Moreover, the Employer continues to have no set timeframe for when—if ever—Texas Station Casino will reopen. Under such circumstances, the totality of the evidence indicates that the Employer cannot reasonably predict when Texas Station Casino will

reopen or whether (much less when) any of the laid-off employees will be recalled or rehired. Combined with the May 1 termination letters to employees, there is no basis for finding that any unit employees have a reasonable expectation of recall at this time. Under Board precedent, the vague and hopeful statements cited by the Regional Director, such as those on the Employer’s website and marquee, are not sufficient to find otherwise.

In short, under Board precedent, none of the petitioned-for employees currently has a reasonable expectation of recall, and Employer therefore has *no eligible voters* that could vote in any election to be held in the foreseeable future. Thus, as a practical matter, the Board cannot hold an election at this time,² and at this juncture and on this record any prediction for when there may once more be eligible voters in this unit would be unduly speculative. Accordingly, we shall dismiss the petition, without prejudice and subject to reinstatement when the Employer resumes operations.³

ORDER

IT IS ORDERED that the petition is dismissed.

Dated, Washington, D.C. August 31, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² We agree with the Regional Director that the Board’s cessation-of-operations precedent ordinarily would not warrant a dismissal here. Under that line of cases, the Board will dismiss a petition “when cessation of the employer’s operations is imminent, such as when an employer completely ceases to operate, sells its operations, or fundamentally changes the nature of its business.” *Retro Environmental, Inc./Green Jobworks, LLC*, 364 NLRB No. 70, slip op. at 4 (2016). Here, however, there is no dispute that, at a minimum, the Employer hopes to resume operations in the future without substantially altering its business. In that event, the unit would continue to exist, and should employees select the Union as their exclusive representative, there would be ample opportunity for bargaining. Thus, this case is distinguishable from typical

cessation-of-operations cases in which the employers were permanently shutting down their operations and effectively erasing the bargaining units, with no possibility of returning. Rather, a temporary-closure situation like this presents a different question: whether the employer’s closure is sufficiently indefinite so as to remove any reasonable expectation of recall in the foreseeable future, rendering all of the laid-off employees ineligible to vote. Because we conclude that the Employer’s closure is sufficiently indefinite to remove any reasonable expectation of recall at this juncture, there are no presently eligible voters for which an election can be held.

³ See, e.g., *Cal-Neva Lodge*, 235 NLRB 1167, 1167 (1978); *Todd-Galveston Dry Docks, Inc.*, 54 NLRB 625, 626 (1944).